Attorney's Docket No.: Touch and Feel
Serial No. 09/505,646

REMARKS

Reconsideration and allowance of the above-referenced application are respectfully requested.

Claims 85-90, 96-107 and 116-124 stand rejected under 35 U.S.C. 103 as allegedly been unpatentable over Danneels in view of Robertson. This contention remains traversed for reasons set forth in previous amendments. To summarize these reasons:

1) It would not be obvious to one having ordinary skill in the art to combine Danneels with Robertson in the way suggested by the Official Action and rejection. Combining the references would require contradicting the express teaching of the Robertson reference. It is well-established that any combination of references that contradicts the express teaching of one of those references is an improper combination. As explained on pages 2-3 of the previous amendment, Robertson teaches providing access to documents, and teaches nothing about limiting any kind of access. Anything that would modify Robertson to teach limiting access would contradict Robertson's teaching that access should be supplied, not limited.

In response to arguments, section 1 on page 4 of the last amendment, the rejection attempts to justify why the hypothetical combination of Robertson in view of Danneels could be made. The rejection states that the reason for making this is "in order to enhance a user-friendly and enabling users to download a limited book page over the Internet". With all due respect, this reason for combination is based on hindsight, not based on the content of the references. The reason of "enabling users to download a limited book page" is precisely what is missing from the Robertson

reference. The reason given for combination, therefore, is to enable the users to do EXACTLY what is missing from the reference. With all due respect, this statement is based on classic hindsight. There is no reason given to make the combination, other than that, effectively, making the combination would add the missing teaching.

In any case, the response to arguments does not address the stated issue -- that making the combination would be contradicting Robertson's express teaching.

2) Even if the combination were made, it would obtain a Robertson type system, along with Danneels' teaching that conditions for the web page may be dependent on status conditions. See generally page 3 of the previous amendment and the full paragraph on the page. Nowhere is there any teaching or suggestion that the system parameters, all of which have to do with the status of the hardware, relate to "if the request for pages exceeds a certain threshold" as claimed.

In the response to arguments (page 5 of the Official Action first paragraph), the rejection discusses the load of the server in Danneels, and how the load on the server may affect the way that files are transferred. This load on the server relates to hardware loading, and teaches nothing about the specific subject matter of claim 85, specifically, "determining if the request for pages exceeds a certain threshold". The load on the server has nothing to do with the request for pages exceeding the threshold.

3) Claims such as claim 86 defying that the images are classified as to whether they count towards the threshold or not. This is not taught by the hypothetical combination of Robertson in view of Danneels. The response to arguments quotes from the section of the patent discussing "variations". That cited section of the patent does not teach or suggest whether a page counts towards the threshold or not – it simply

teaches that variations are possible. Simply describing that variations are POSSIBLE, however, does not disclose or suggest any specific variation.

For these reasons, the new rejection is in error, and a notice of allowance is requested.

4. With all due respect, this rejection treats does not use the proper standard for determining patentability. It is noted that the patent office is taking the administrative position that patent applications in class 705 should be examined using extraordinary scrutiny. The undersigned respectfully advances the notion, which will be continued on appeal and before the Federal Circuit, if necessary, that this extraordinary scrutiny on examination is ultra vires the Patent Office's authority as an institution, denies the undersigned applicant due process and equal protection, and as such, is wholly improper.

A call was made to the Examiner on July 12, 2005, in an attempt to schedule an interview to discuss this case. That call was not returned. The undersigned again requests such an interview in an attempt to bring the examination in this case to a close.

A notice of appeal is concurrently filed, along with a "Pre-Appeal Brief Request for Review".

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with

regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Therefore, all of the claims should be allowable for these reasons.

Should the Examiner have any issues remaining after considering this amendment, the Examiner is respectfully encouraged to call the undersigned at the below telephone number, in an attempt to most expeditiously resolve these issues.

If there are any other charges, or any credits, please apply them to Deposit Account No. 50-1387.

Respectfully submitted,

Date: 7-20-05

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